

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

THE HOME BANK OF TENNESSEE,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	No. 3:06-CV-191
)	(Phillips)
GARY S. BEAMS,)	
)	
Defendant/Counter-Plaintiff.)	

MEMORANDUM AND ORDER

In this diversity action, plaintiff The Home Bank of Tennessee seeks to hold defendant Gary S. Beams liable for \$117,123.11 on a guaranty to secure payment on a promissory note. Beams denies liability under the guaranty and affirmatively asserts the defenses of fraud, promissory fraud, and fraudulent inducement in obtaining his signature on the guaranty. In addition, Beams has asserted counterclaims against the Bank on the theories of promissory estoppel, negligent misrepresentation, and violation of the Tennessee Consumer Protection Act.

The Bank moved for summary judgment on its claims which was denied by the Honorable Thomas A. Varlan, District Judge. Judge Varlan found there existed material issues of fact present with respect to defendant's affirmative defenses and defendant's counterclaims [Doc. 23]. This action was reassigned to the undersigned on November 28,

2007 [Doc. 26]. The Bank has renewed its motion for summary judgment [Doc. 29]. Beams opposes the motion.

Upon careful review of the record, the undersigned agrees with Judge Varlan that there are multiple issues of material fact which remain to be determined. The facts in the instant matter, viewed in a light most favorable to Beams, establish misrepresentations on behalf of the Bank which induced Beams' execution of the guaranty; or alternatively, those facts demonstrate the parties' mistake as to the effect of the guaranty. In either event, defenses to the enforcement of the guaranty as written and grounds for its rescission or reformation are raised, and the validity of the guaranty is called into question. There exist genuine issues of material fact to be determined at trial, and summary judgment is not appropriate in this case.

Accordingly, the Bank's renewed motion for summary judgment [Doc. 29] is **DENIED**. The parties will prepare the case for trial.

ENTER:

s/ Thomas W. Phillips
United States District Judge